

May 1, 2023

The Honorable Patricia A. Howard
Clerk of Court
The Supreme Court of South Carolina
Post Office Box 11330
Columbia SC 29211

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S.C. SUPREME COURT

RE: Pashaad Thomas vs. The State of South Carolina
Case No: 2021-CP-42-01425

Dear Ms. Howard:

This letter is in response to a letter I received from Richey and Richey PA dated April 15, 2023 that I didn't receive until May 1, 2023. I understand according to the letter I am to file a prose explanation as to why I believe the determination by the circuit court was improper.

Firstly, I expressed my wishes to discharge Rodney Richey as my attorney. There were conflicts of interest between he and I where 1) during the proceeding he voiced multiple times that ~~he~~^{he} never knew about Nick Cash and the day of the proceeding was the first day he ever heard about Nick Cash. Please find enclosed the original PCR application where Nick Cash was mentioned and Rodney Richey represented me in that proceeding. He failed to subpoena Cash as I had advised him to do prior to that proceeding. 2) He attempted to make Cash perjure testimony when I clearly stated I was not with Cash during the time of the crime. Cash's testimony/part in my PCR was the fact he had access to my social media site (Facebook) with messages from the codefendant police used as the key witness. These messages would've shown that codefendant asking for my help/advice with his part ~~in~~^{after} the crime. Rodney Richey did not contact Cash just as my initial trial attorney Travis Moore ~~and the first~~ had done. 3) Rodney Richey never contacted me prior to the proceeding to discuss new evidence I had to show my legal work had been lost by the department of corrections during the phase of the 2nd PCR. The evidence which is also enclosed, will show my ~~extensive~~^{PT} exercise of due diligence attempting to acquire my evidence. 4) Rodney Richey refused to subpoena the discovery I attempted

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to argue in the first PCR showing clear proof where the arresting officer Walsh tampered with evidence and perjured his reports, making the arrest unlawful, in order to gain an arrest warrant.

Prejudice, due to Richey's actions, is shown where the court found no merit in my claims and dismissed them with prejudice. The court erred in not allowing the ~~def~~ appellant to explain the basis of his contention and to relate specific instances of the attorney's inadequate performance pursuant to USCA Const. Amend. 6 and *People v. Lara*; *US v. Borders*; *State v. Harter*, 134 Haw. 308, 340 P.3d 440 (2014)

Secondly, the appellant attempted to show the court his history of mental illness through the subpoena process and requested the court grant his request ^{RT} for to compel the discovery from the department of corrections and the Spartanburg County Detention Facility. These records would've shown the appellant suffered multiple mental illnesses and was hospitalized multiple times, including for suicide attempts, prior to his incarceration. The circuit court refused to answer his requests. While the 14th amendment protects defendants from being prosecuted, sentenced while incapacitated, the appellant was known to have mental illnesses but was not given a mental evaluation prior to his conviction. Please find enclosed a transfer history from the department of corrections showing psychiatric hospitalizations of the appellant prior and post conviction. Please also find enclosed appellant's motion to produce, subpoena, and motion to compel.

Due to the appellant not having access to the full discovery during the first PCR he filed multiple PCR's to gain access to it to prove his claims and enjoy his "full bite of the apple". Without discovery he exercised due diligence in ~~ob~~ attempting to obtain ^{discovery} ~~he could not enjoy his full bite of the apple~~ ^{and} misrepresentation by Rodney Richey also hindered this. Please find enclosed appellant's subpoena to Travis Moore for discovery.

Sincerely Yours Truly,

Rashaad Thomas
Rashaad Thomas #344003
F2-132
386 Redemption Way
McCormick SC 29899

P.S. Appellant also filed a motion for status conference to move the court to answer his motion to produce and motion to compel discovery. All motions went unanswered in the affirmative or negative.

The state attorney general's office committed perjury during the proceeding by stating "We have a victim who can identify the ~~sus~~ appellant as a suspect." Richey didn't object. The 911 call log (enclosed) and the only victim who said he saw a third suspect both stated there was no description of said suspect. In fact the victim's statement said the suspect's ~~face was covered~~ ^{was wearing} a "navy blue ~~s~~ ^{hoodie}". If the victim couldn't see the suspect or hear the suspect (victim never said the suspect said anything), who is the victim the attorney general's office claims ~~as~~ can identify appellant? This statement was also stated by the assistant prosecutor who also committed perjury in doing so. All statements by victims are enclosed.

The prosecution also withheld evidence of codendants's girlfriend as a suspect/accomplice in incident. Walsh stated in a report that a witness saw the girlfriend come into the restaurant talking on her phone minutes prior to the robbery/shooting.

Please notice that the screenshots of alibi witness Frederick Means ~~was~~ email statement was dated Feb. 17, 2019. The screenshot was taken on Sept. 12, 2019, but wasn't printed until Sept. 29, 2019. I asked the court to dismiss my claim without prejudice at that moment because due to covid 19 restrictions mail was backed up and once I did get it 1) I couldn't get legal materials to send it to the courts (staff request enclosed) 2) the department of corrections lost it in a transfer (staff requests enclosed). Court dismissed with prejudice.

Under the statute 17-27-90, the ending of this statute states unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was adequately raised in the original, supplemental, or amended application. Alibi witness statements couldn't have been raised in original, supplemental, or ~~original~~ ^{amended} complaint because they didn't exist until a year later. Appellant didn't receive a copy of the

lost discovery until April 8, 2021 in which he immediately brought his issues before the court pursuant to after discovered evidence guidelines. 2021 was 3 years after original PCR and again, this was not subpoenaed or requested by appellant PCR attorney Rodney Richey. Appellant had to designate his aunt, Sharon Cook of 108 Larkspur Lane Spartanburg SC 29301 (864-680-6883) as his power of attorney who was then able to obtain discovery from Travis A. Moore Esq. 3 years after diligently attempting to acquire it.

With Rodney Richey failing to meet with appellant and thus prepare this evidence for the court, none of this was brought or adequately raised for the proceeding. It is safe to say if the first PCR would've been sent to appeals court without the evidence appellant had to obtain 3 years later it would've been dismissed. Appellant feels he should have the opportunity to adequately raise the issues with a preponderance of evidence and enjoy a FDL bite at the apple.

Law / Analysis

Courts cannot properly resolve motions for substitution of counsel without probing why addendant wants a new lawyer. *Martel v. Clair*, 565 U.S. 648, 132 S. Ct. 1276, 182 L. Ed. 2d 135 (2012)

In evaluating whether trial court abused its discretion in denying defendant's motion for substitution of counsel, appellate court considers 3 factors: Timeliness of motion, adequacy of trial court's inquiry into defendant's complaint, and attorney-client conflict, whether it was so great that it resulted in total lack of communication preventing an adequate defense. *U.S. v. Mullen* US Court of Appeals 4th Cir. Aug. 22 (1994), 32 F. 3d 891.

Before ruling on a motion to substitute counsel based upon a breakdown in communication or an irreconcilable difference, a trial court must conduct a penetrating and comprehensive inquiry into the nature of the relationship between the defendant and counsel. *State v. Harter*, 134 Haw. 308, 340 P. 3d 440 (2014).

- Deciding whether a defendant is entitled to substitute counsel requires an inquiry laden with factual determinations, and, thus, when an indigent defendant voices objections to court appointed counsel, the trial court has the obligation to inquire into the reasons for the dissatisfaction. *People v. Bergerud*, 223 P. 3d 686 (Colo. 2010).